

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSHUA BERNSTEIN,

Plaintiff,

NO. 1:14-CV-02540 (VSB)

-against-

REPLY TO COUNTERCLAIMS

JAY CHERNIKOFF,

Defendant.
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Plaintiff, Joshua Bernstein ("Plaintiff"), by his attorneys, Bernstein & Bernstein, as and for his Reply to the Counterclaims asserted against him in the Answer, Affirmative Defenses, and Counterclaims of Defendant Jay Chernikoff ("Defendant") dated March 30, 2015 (the "Counterclaims"), alleges and asserts upon information and belief as follows:

1. Plaintiff admits the allegations contained in paragraph 1 of the Counterclaims to the extent that Plaintiff filed a Verified Amended Complaint ("Complaint") in this action that asserts various claims against Defendant. Plaintiff denies the remaining allegations contained in paragraph 1 of the Counterclaims and respectfully refers the Court to the Complaint for the allegations asserted therein.

2. Plaintiff denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Counterclaims.

3. Plaintiff denies the allegations set forth in paragraph 3 of the Counterclaims.

4. Plaintiff denies the allegations set forth in paragraph 4 of the Counterclaims.

5. Plaintiff denies the allegations set forth in paragraph 5 of the Counterclaims.

COUNT I:

BREACH OF CONTRACT

6. In response to paragraph 6 of the Counterclaims, Plaintiff repeats, reiterates and realleges each of his responses to paragraphs 1 through 5 of the Counterclaims as if contained at length herein.

7. Plaintiff denies the allegations set forth in paragraph 7 of the Counterclaims, except admits that Plaintiff and Defendant entered into a partnership agreement.

8. Plaintiff denies the allegations set forth in paragraph 8 of the Counterclaims.

9. Plaintiff denies the allegations set forth in paragraph 9 of the Counterclaims.

10. Plaintiff denies the allegations set forth in paragraph 10 of the Counterclaims.

11. Plaintiff denies the allegations set forth in paragraph 11 of the Counterclaims.

12. Plaintiff denies the allegations set forth in paragraph 12 of the Counterclaims.

13. Plaintiff denies the allegations set forth in paragraph 13 of the Counterclaims.

COUNT II:

BREACH OF FIDUCIARY DUTY

14. In response to paragraph 14 of the Counterclaims, Plaintiff repeats, reiterates and realleges each of his responses to paragraphs 1 through 13 of the Counterclaims as if contained at length herein.

15. Plaintiff denies the allegations set forth in paragraph 15 of the Counterclaims, except admits that Plaintiff and Defendant entered into a partnership agreement.

16. Plaintiff states that Paragraph 16 of the Counterclaims contain legal assertions to which no response is required. To the extent a response is required, Plaintiff denies each and every allegation set forth in Paragraph 16 of the Counterclaims.

17. Plaintiff denies the allegations set forth in paragraph 17 of the Counterclaims.

18. Plaintiff denies the allegations set forth in paragraph 18 of the Counterclaims.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

19. Defendant has failed to state a cause of action against Plaintiff upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

20. Defendant's Counterclaims are barred by the Statute of Frauds.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

21. Defendant's claimed damages are or may be barred, in whole or in part, by offsetting damages owed by Defendant to Plaintiff.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

22. Defendant's counterclaims fail due to Defendant's failure of performance or other conduct by Defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

23. Defendant's counterclaims fail because Plaintiff did not breach the parties' agreement or any fiduciary duty owed to Defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

24. Defendant has not suffered any damages or loss proximately caused by Plaintiff's alleged breach of contract and/or fiduciary duties.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

25. The damages alleged in the Counterclaims, if any, were incurred as a result of Defendant's conduct.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

26. Defendant's counterclaims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches and accord and satisfaction.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

27. Plaintiff reserves the right to plead and assert additional defenses as discovery or further assertions of Defendant should thereafter dictate.

WHEREFORE, Plaintiff demands judgment against Defendant Jay Chernikoff:

- a. Granting the relief sought in the Complaint;
- b. Dismissing the Counterclaims in their entirety; and
- c. Granting such other and further relief that the Court deems just and proper, all together with the costs, disbursements and attorney's fees incurred by Plaintiff.

Dated: White Plains, New York
April 20, 2015

BERNSTEIN & BERNSTEIN
Attorneys for Plaintiff



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